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No. _____

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM A. ALLAIN, *et al.*,

Appellants,

v.

OWEN H. BROOKS, *et al.*,

Appellees.

On Appeal From The United States District
Court For The Northern District Of Mississippi

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Whether Section 2 of the Voting Rights Act, in which Congress sought to codify *White v. Regester*, requires proof of discriminatory intent.

II. Whether a finding of validity under Section 5 of the Voting Rights Act precludes a challenge under Section 2 insofar as Section 5 presents a more stringent standard and Section 2 creates no right not protected by Section 5.

III. Whether the district court clearly erred in making findings of fact which are unsupported by the record and insufficient under Rule 52(a).

PARTIES TO THE PROCEEDING BELOW

The Appellants, defendants in the action below are:

Bill Allain, Governor of Mississippi, replacing former Governor William Winter pursuant to this Court's Rule 40.3; Edwin Lloyd Pittman, Attorney General, replacing Bill Allain in that capacity; Dick Molpus, Secretary of State, replacing Edwin Lloyd Pittman in that capacity; the State Board of Election Commissioners; Mississippi Republican Executive Committee; Mississippi Democratic Executive Committee. The following Defendants were dismissed by order of the District Court on May 7, 1982: Brad Dye, Lieutenant Governor; Clarence B. "Bud-die" Newman, Speaker of the House of Representatives; T. H. Campbell III, Chairman, Bill Harpole, Vice-Chairman, and J. C. "Con" Maloney, Secretary, of the Joint Congressional Redistricting Committee.

Plaintiffs in the consolidated actions below, Appellees herein, are: Owen H. Brooks, Reverend Harold R. Mayberry, Willie Long, Robert E. Young, Thomas Morris, Charles McLaurin, Samuel McCray, Robert Jackson, Reverend Carl Brown, June E. Johnson, and Lee Ethel Henry, individually and on behalf of all others similarly situated; and David Jordan and Sammie Chestnut, on behalf of the Greenwood Voters League, individually and on behalf of all others similarly situated.

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No. _____

WILLIAM A. ALLAIN, *et al.*,
v.
OWEN H. BROOKS, *et al.*,
Appellants,
Appellees.

On Appeal From The United States District
Court For The Northern District Of Mississippi

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the three-judge District Court for the Northern District of Mississippi entered April 16, 1984, is unreported and is reproduced in Appendix A. The prior District Court opinion is reported at 541 F.Supp. 1135 (N.D. Miss. 1982) and was vacated and remanded by this Court for reconsideration in light of Section 2 of the Voting Rights Act, as amended in 1982, *Brooks v. Winter*, 103 S.Ct. 2077 (1983).

JURISDICTION

This action was originally filed in 1982 by plaintiffs seeking to enjoin the use of two Congressional redistricting plans. On remand by order of this Court, the district court reconsidered its remedial plan in light of Section 2 of

the Voting Rights Act. The district court entered judgment on January 6, 1984 and issued an opinion on April 16, 1984. The plaintiffs, Owen H. Brooks, *et al.* filed a Jurisdictional Statement received by the cross-appellants herein on May 16, 1984. This cross appeal is docketed pursuant to Rule 12.4 by filing of this Jurisdictional Statement within 30 days of that of the appellants. The jurisdiction of this Court is invoked under 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The United States Constitution, Fourteenth Amendment and Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, 1973c are set out in Appendix C.

STATEMENT OF THE CASE

In 1981 the Mississippi Legislature passed a Congressional redistricting plan, S.B. 2001. That plan was identical, with slight adjustments to accommodate minor population shifts, to the plan adopted and precleared under Section 5 of the Voting Rights Act in 1972. The 1972 plan in turn reenacted the configuration of the 1965 plan which had been declared constitutional by a district court and which judgment was affirmed by the United States Supreme Court. *Connor v. Johnson*, 386 U.S. 483 (1967). Nonetheless, in 1982, the Attorney General determined that he was bound by neither the prior preclearance nor the judgment of constitutionality, and he interposed an objection to S.B. 2001.

The plaintiffs below filed suit to enjoin the use of either the unprecleared plan or the malapportioned 1972 plan. The district court declined to order the interim use of S.B. 2001 without preclearance and instead instituted the so-called Simpson plan which it found, among the available

plans, to best embody state policy while meeting the requirements of the Constitution and the Voting Rights Act. *Jordan v. Winter*, 541 F.Supp. 1135 (N.D. Miss. 1982).

On remand from this Court, the district court evaluated its own remedial plan in light of Section 2. It concluded that the Simpson plan, particularly District 2, was in violation of the amended statute. The court based this conclusion on an erroneous interpretation of Section 2 as a pure "results" test and the assumption that Section 2 guarantees black citizens the right to elect members of their own race and concomitantly to districts designed to achieve that purpose.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. Insofar As Congress Amended Section 2 In Order To Codify *White v. Regester*, A Violation Of Section 2 Requires Proof Of Discriminatory Purpose.

Section 2 of the Voting Rights Act as amended provides that no electoral system or mechanism shall be imposed or applied in a manner which results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973. The Section further provides that such a denial or abridgement is established if it is proven that "based on the totality of circumstances . . . the political processes leading to nomination or election . . . are not equally open to participation" by protected minorities. The statute adds that this depends on whether the minority in question has "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

In *White v. Regester*, 412 U.S. 755 (1973) this Court wrote that in a vote dilution case brought under the Fourteenth Amendment:

[t]he plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. 412 U.S. at 766.

The similarity between the language of the amended statute and *White* is far from coincidental. The Report of the Senate Committee on the Judiciary specifically states that the language ultimately agreed on and enacted “embodies the test laid down by the Supreme Court in *White*.” Report of the Committee on the Judiciary, United States Senate, S.Rep. No. 417, 97th Cong., 2d Sess. (1982) at 27. In fact, the legislative history is replete with comments made before the committees and on the Senate floor to the effect that the new provision codified *White*. See, e.g., Voting Rights Act: Hearings Before the Subcommittee on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. (1982) at 88 (testimony of Rep. Sensenbrenner); 199 (testimony of Sen. Mathias); 796 (testimony of Sen. DiConcini); Appendix at 80 (comments of Sen. Dole).

In *White*, the Court upheld the decision of the district court that two at-large legislative districts in Texas were “being used invidiously to cancel out or minimize the voting strength of racial groups.” 412 U.S. at 765. To arrive at this conclusion the district court reviewed, and the Supreme Court later recounted, the totality of circumstances in the districts in question. The Court concluded that the challenged multi-member districts “as

designed and operated . . . invidiously excluded Mexican Americans [and Blacks] from effective participation in political life.” 412 U.S. at 769.

While the Court in *White* did not expressly state that discriminatory intent was a necessary element of a vote dilution case, it is clear that the Court inferred discriminatory purpose from the totality of relevant facts. This is confirmed by Justice White, the author of the *White v. Regester* opinion, in his dissenting opinion in *City of Mobile v. Bolden*, 446 U.S. 55 (1980). Justice White disagreed with the plurality in *Bolden* that the evidence in that case fell far short of establishing an impermissible intent. The *Bolden* plurality, he wrote, “ignores the principles that an invidious discriminatory purpose can be inferred from objective factors of the kind relied on in *White v. Regester* . . .” 446 U.S. at 95.

There are other compelling reasons to read *White* as an intent standard, albeit one that accepts circumstantial evidence of discriminatory intent. In *Washington v. Davis*, 426 U.S. 229 (1976) the Court unequivocally restated the proposition that discriminatory purpose is a prerequisite to a finding of a violation of the Equal Protection Clause of the Fourteenth Amendment.¹ In that opinion, the Court lists those cases which it viewed as inconsistent with the holding in *Washington*, and thereby

¹ Interestingly, *Washington* cites *Wright v. Rockefeller*, 376 U.S. 52 (1964), a case in which blacks challenged the reapportionment of the New York Legislature, as a clear precedent for the requirement of proof of intent in discrimination cases brought pursuant to the Fourteenth Amendment. This directly contradicts the erroneous view of some members of Congress that *City of Mobile* was the first case involving voting rights in which the Supreme Court required a showing of intent.

overruled. 426 U.S. at 244-45 and n.12. *White v. Regester* is not among the cases invalidated by the later ruling.

Finally, this Court's opinion in *Rogers v. Lodge*, 458 U.S. 613 (1982) demonstrates that the *White* Court inferred intent from the objective factors discussed by the trial judge. The *Rogers* Court, quoting *Whitcomb v. Chavis*, 403 U.S. 124 (1971), wrote that multimember districts violate the Fourteenth Amendment if "conceived or operated as purposeful devices to further racial discrimination" by diluting the voting strength of a racial minority. The Court also cited *White v. Regester* in support of this basic principle, obviously reading *White* as an intent case.

Some members of Congress, however, refused to admit that the standard used in *White* was one of intent inferred from circumstantial evidence and insisted that it was a "results" test. See, e.g., Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Report on the Voting Rights Act, Comm. Print, 97th Cong., 2d Sess. (1982) at 194 (remarks of Sen. Dole). Rep. Hyde, noting the disparity between the views of some proponents of the bill and his own understanding of *White* commented:

Under the Senate amendments, the "results" test remains in the statute but, since it has no precursor in the law, it is explained by the adoption of clarifying language. Specifically, the amendments provide that a violation of the results test can be shown by an examination of the totality of the circumstances surrounding the alleged discrimination, and the determination that "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of the class of citizens protected" by the Voting Rights Act. While this language may give the appearance to some of being an "effects" test, and indeed has been marketed as such in some quarters,

it has been taken, virtually word for word, from the Supreme Court's 1973 holding in *White v. Regester*, 412 U.S. 755, 766, a case which, according to its author, Justice Byron White, underscored the requirement that an "invidious discriminatory purpose (must) be inferred from the totality of facts" to constitute a violation. *Mobile v. Bolden*, 466 U.S. 55, 95 (1980).

It is also worth noting that the language adopted in the Senate was suggested during the House debate by the minority but was rejected and, during negotiations for a compromise in which I was intimately involved, no one would consider it. Therefore, it is clear, and I suspect will be clear by a reviewing court, that the language adopted through the Senate compromise is language which was rejected in the House and which, therefore, represents the intent standard articulated by *White*, not an effect standard as some would suggest. 128 Cong. Rec. H3842 (daily ed. June 23, 1982) (comments of Rep. Hyde.)

In addition, Senator Orrin Hatch, Chairman of the Senate Subcommittee stated:

To the extent that they have explicitly anchored this language to *White*—and that point is far clearer in the Committee debates on this issue than even in the Committee Report—courts are obliged to recognize this and appreciate that Congress (for better or worse) chose to incorporate the case law of *White*—all of its case law—in rendering meaning to the new statutory language. Given the Committee's decision to define the new test in terms of *White* the Committee report ironically is reduced substantially in importance. S.Rep. No. 417, 97th Cong., 2d Sess. (1982) at 104, n.24.

By virtue of Congress' expressed intent to codify the standard applied by the Supreme Court in *White*, Section 2 of the Voting Rights Act requires that a plaintiff prove

discriminatory intent. In the present case, the challenged redistricting plan had been ordered into effect as an interim plan by a three-judge federal court. The plaintiffs did not allege, nor did they attempt to prove, any discriminatory intent on the part of the court. Neither did the court below make any findings on the issue of purpose.

Numerous other federal courts have found violations of Section 2 in cases in which there was no proof of discriminatory intent. *See, e.g., Jones v. City of Lubbock*, 727 F.2d 364 (5th Cir. 1984); *Gingles v. Edmisten*, No. 81-803-CIV-5 (E.D.N.C. Jan. 27, 1984); *Velasquez v. City of Abilene*, 725 F.2d 1017, 1019 (5th Cir. 1984); It is essential that this Court properly interpret Section 2 in light of *White v. Regester* and the case law which it engendered.

II. A Finding Of Validity Under Section 5 Precludes A Challenge Under Section 2 Insofar As Section 5 Presents A More Stringent Standard And Section 2 Creates No Right Not Protected By Section 5

In its opinion of June 8, 1982, the district court specifically found that the Simpson plan met the requirements of Section 5.² *Jordan v. Winter*, 541 F.Supp. 1135 (N.D. Miss. 1982) at 1143. Although it did not have authority to "preclear" the interim plan, the court recognized that it was still obligated to design a plan which was both constitutionally and statutorily valid. 541 F.Supp. 1143. *See also App. at 5a.*

The legislative history of Section 2 demonstrates that a finding of validity under Section 5 satisfies Section 2. In the Senate Report, the Committee had set out to refute

² In the appeal of this decision which resulted in remand, the Department of Justice also found the Court's plans to fully satisfy Section 5. *See Brooks v. Winter*, No. 82-233, Brief for the United States as Amicus Curiae at 11-12.

the findings of the Subcommittee which had identified many cities including Savannah, Georgia, as vulnerable under the new standard. The Senate Judiciary Committee, determined that this finding of the Subcommittee was obviously inaccurate. Savannah had completed an annexation in 1978 which had required preclearance. "After subjecting the proposed annexation to the rigorous requirements of Section 5," the Department of Justice decided that the election system provided black voters with adequate opportunity for participation and election. S.Rep. No. 97-417 at 35. The Senate Report concluded that insofar as Savannah's city council system had passed muster under Section 5, it would necessarily also meet the requirements of the proposed amendment. *Id.* at 35. Because Section 2 as amended establishes a standard no more stringent than Section 5, the court below was precluded from considering a challenge to the Simpson plan under Section 2.

In its original opinion before remand, the district court noted that neither the Constitution nor the Voting Rights Act required a state "to search for ways to maximize the number of black voting age population districts. Likewise, no racial group has a constitutional or statutory right to an apportionment structure designed to maximize its political strength." 541 F.Supp. at 1144, quoting *Mississippi v. United States*, 490 F.Supp. 569, 582 (D.D.C. 1979), *aff'd mem.* 444 U.S. 1050 (1980). These comments from the court in 1982 referred to Section 5, but they are just as true today under Section 2 as amended. Section 2 creates no new substantive rights. *See Smith v. Winter*, 717 F.2d 191 (5th Cir. 1983) at 198, n.3. Thus the rights the court below must protect under Section 2 were already adjudicated in the prior litigation when the court designed an interim plan which satisfied Section 5.

Nevertheless, the court below replaced the Simpson plan which contained a Second District with a slight white voting age majority in spite of a black population majority, with a new plan containing a black voting age population of 52.9 percent. The court did this in order to ensure that, if the blacks in the district vote as a bloc, a black candidate would be elected. Section 2, however, does not guarantee any group the right to elect one of its own members. *Seamon v. Upham*, No. P-81-49 C.A. (E.D. Tex. Jan 30, 1984) The district court correctly assumed that there is a right to unhindered access to the ballot as well as a right to form political associations and launch candidates. It wrongly assumed, however, that Section 2 somehow confers a right, not granted in Section 5, to be represented as a group or by a member of one's own race.

The importance of this issue, the interrelationship between Section 5 and Section 2, cannot be overstated. It has been raised before several district courts, *see e.g.*, *Major v. Treen*, 574 F.Supp. 325 (E.D. La. 1983), and in Jurisdictional Statements presently pending before the Court. *See Mississippi Republican Executive Committee v. Brooks*, No. 82-1722; *Edmisten v. Gingles*, No. 83-1968. The resolution of this question would avoid needless relitigation of vote dilution cases in covered jurisdictions.

III. The District Court Clearly Erred In Making Findings Of Fact Which Are Unsupported By The Record And Insufficient Under Rule 52(a)

The plaintiffs in the action below presented evidence designed to establish the existence of the factors listed as relevant to a finding of dilution in the Senate Report. S.Rep. at 28-9. The Court in turn made findings of fact suggested by the Senate factors, but failed to account for any of the contradictory evidence or to show how the record supported those findings.

The court found that blacks in Mississippi and especially in the Delta "generally have less education, lower incomes, and more menial occupations than whites." App. at 10a. Based on the comment in the Senate Report that evidence of socio-economic disparities between blacks and whites is probative of unequal access to the political process,³ the court found that political participation by blacks in the Delta region and in the State as a whole, was depressed.

This finding was directly refuted by actual statistics on political participation published by the United States Bureau of the Census. The Census Bureau publication, "Voting and Registration in the Election of November 1982," which was received into evidence, (P.Ex. 45) showed that 79.6% of the whites and 75.8% of the blacks were registered statewide. Tr. 55. In addition, 52.4% of the eligible whites actually voted in the November 1982 election as compared to 50.8% of the eligible blacks. Tr. 55. The difference between registration and turnout for the two racial groups is *de minimus*; surely based on the

³ "The courts have recognized that disproportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participations, *e.g.*, *White*, 412 U.S. at 768; *Kirksey v. Board of Supervisors*, 554 F.2d 139, 145. Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further casual nexus between their disparate socio-economic status and the depressed level of political participation." Senate Report No. 417, 97th Congress 2nd Sess. at 29, n.114.

In note 114 of the Senate Report, Congress expressed its intent that a plaintiff need not prove a casual nexus between disparate socio-economic status and depressed political activity. However, social and economic circumstances have no relevancy at all to the issue of vote dilution if participation by the group claiming dilution is not in fact depressed. Note 114 does not relieve the plaintiffs of proving depressed political participation, it merely relieves them of proving the nexus between the two circumstances.

available statistics, the political participation of blacks cannot be said to be depressed. The high level of political activity by blacks in the state is even more striking when Mississippi's black registration rate of 75.8% is compared with the national figure of 59.1%. In fact, the State of Mississippi has the third highest rate of registration among blacks in the country. The district court erred in *guessing* at the level of participation among blacks based on socio-economic factors, when direct evidence of political involvement was available. Moreover, the Court failed to state all the substantial evidence contrary to its opinion, such as the Census Bureau registration and turnout figures, as required by Federal Rule of Civil Procedure 52(a). See *Velasquez v. City of Abilene*, 725 F.2d at 1020-23.

The court also made findings regarding polarized voting which cannot be sustained based on the evidence. The court found, based on the testimony of plaintiffs' expert, that in Mississippi "the majority of voters choose their preferred candidates on the basis of race." App. at 10a. However, the plaintiffs' expert witness merely demonstrated that the racial make-up of a precinct correlated with the race of the candidate who carried that precinct. He did not attempt to test any factors but race for similar correlations. As Judge Patrick E. Higginbotham of the Fifth Circuit noted recently, a truly objective analysis would test for other explanatory factors such as campaign expenditure, party identification, media use, religion, name identification and the distance the candidate lived from any particular precinct. *Jones v. City of Lubbock*, 727 F.2d 364 (5th Cir. 1984), *reh'g and reh'g en banc denied*, 730 F.2d 233 (5th Cir. 1980). The use of a regression analysis which correlates only racial make-up of the precinct with race of the candidate "ignores the reality that race . . . may mask a host of other explanatory

variables." *Id.* at 235. Cf. *Terrazas v. Clements*, 581 F.Supp. 1329, 1351-5 (N.D. Tex. 1984) (detailed discussion of proof regarding polarized voting).

In addition, the court failed to state the significant evidence which contradicted its finding of racial polarization. For example, the analyses performed by the defendants' expert showed a consistent and substantial Republican vote in the Second District which would account for the paucity of votes in some areas for a black Democratic candidate. Tr. at 393. The court also failed to note that State Representative Robert Clark, the black democratic nominee in the 1982 race for the Second District, lost by less than 3,000 votes and received, according to the plaintiffs' expert, 19% of the white vote. Tr. at 276. Further, the court did not mention that there was substantial evidence that many black leaders opted not to support Clark because they feared that a victory for Clark in that 53% black district would "lose the argument we've made all these years that we need a 65% black population . . . to have a realistic chance of winning." Tr. at 175.

Based as it is on insufficient findings of fact, the judgment of the court below should not stand.

CONCLUSION

For the reasons stated above, the Court should note probable jurisdiction of this cross-appeal.

Respectfully submitted,

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APPENDIX

APPENDIX A

District Court Opinion.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

No. GC82-80-WK-0

DAVID JORDAN, *et al.*,
Plaintiffs,

v.

WILLIAM WINTER, *et al.*,
Defendants.

No. GC82-81-WK-0

OWEN H. BROOKS, *et al.*,
Plaintiffs,

v.

WILLIAM F. WINTER, *et al.*,
Defendants.

(April 16, 1984)

**ON REMAND FROM THE
UNITED STATES SUPREME COURT**

**Before CLARK, Chief Circuit Judge; SENTER, Chief
District Judge; and KEADY, Senior District Judge.**

PER CURIAM:

On June 8, 1982, this court ordered into effect on an interim basis a congressional redistricting plan for the State of Mississippi. *Jordan v. Winter*, 541 F.Supp. 1135, 1144-45 (N.D. Miss. 1982). On appeal, the United States Supreme Court vacated this court's judgment and remanded the case for further consideration in light of Section 2 of the Voting Rights Act of 1965, — U.S. —, 103 S.Ct. 2007 (1983).

This court held an evidentiary hearing in December of 1983. On the basis of the evidence adduced at trial and the pleadings, briefs, and argument of counsel, we concluded that the court-ordered plan, or Simpson Plan, violated amended § 2. The court found that the structure of the Second Congressional District in particular unlawfully diluted black voting strength. Accordingly, on January 6, 1984, we entered judgment directing the use, until the Mississippi Legislature enacts a valid congressional redistricting plan, of an interim plan fashioned by the court with the aid of the parties. Pursuant to the reservation set out in that final judgment, we now enter Findings of Fact and Conclusions of Law in support of that judgment, in conformity with Fed. R. Civ. P. 52(a).

I. *Procedural History*

The history of the legislative and judicial efforts to secure a constitutional congressional redistricting plan for the State of Mississippi is set out in our prior decision in *Jordan v. Winter*, 541 F.Supp. 1135 (N.D. Miss. 1982). Only a brief summary is required here.

The 1980 official census revealed a total population disparity in Mississippi's 1972 congressional districting plan of 17.6%. Recognizing the constitutional problem posed by such malapportionment, see U.S. Const. Art. 1, § 2; *Reynolds v. Sims*, 377 U.S. 533 (1964), the Mississippi Legislature in 1981 enacted S.B. 2001¹ for redistricting

¹ 1981 Mississippi Laws (Extraordinary Sess.) Ch. 8.

the state's five congressional districts. The Attorney General of the United States, after reviewing the plan pursuant to the preclearance provisions of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c,² interposed a timely objection on March 30, 1982. The Attorney General found the plan defective because it divided the concentration of black majority counties located in the northwest or "Delta" portion of the state among three districts rather than concentrating them in a single district.³ He concluded that this configuration constituted an unlawful dilution of minority voting strength.

The Mississippi Legislature did not attempt to enact another plan or otherwise to obtain preclearance from the Attorney General. On April 7, 1982, it filed a declaratory judgment action in the United States District Court for the District of Columbia seeking judicial preclearance of S.B. 2001. *Mississippi v. Smith*, No. 82-0956. That action has since been voluntarily dismissed.

The Jordan and Brooks plaintiffs then filed class actions to enjoin enforcement of S.B. 2001 until it was precleared, to prohibit further use of the 1972 plan because of population malapportionment, and to secure a court-ordered interim plan for the 1982 congressional elections and thereafter until change by law. A three-judge district court was convened pursuant to 28 U.S.C. § 2284.

² Mississippi is a covered jurisdiction under § 5 of the Voting Rights Act, and S.B. 2001 was a change in voting standards, practices, or procedures within the meaning of § 5.

³ The Mississippi Delta consists of the following counties: Bolivar, Carroll, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Issaquena, Leflore, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tunica, Warren, Washington, and Zazoo. Mississippi's congressional districting plans from 1882 to 1966 all contained a district encompassing most of the Delta counties. 541 F. Supp. at 1139 and n.2. Maps depicting the congressional districts as they existed under the 1962 plan and under S.B. 2001 are attached. District 2 of the 1962 plan contains most of the Mississippi Delta.

Jurisdiction was based on 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1973j(f). This court declined to place the unprecleared S.B. 2001 into effect on an interim basis and concluded that the 1972 plan was unconstitutionally malapportioned and therefore also unsuitable for interim use. *Jordan v. Winter*, 541 F.Supp. at 1142. It thus limited its consideration to two plans advocated by the plaintiffs and one advocated by the AFL-CIO as amicus curiae.

Plaintiffs urged the court to order into effect either of two plans devised by Senator Henry J. Kirksey, a black state legislator. Both plans kept the Delta area intact and achieved black majority districts by combining the Delta area with predominantly black portions of Hinds County and the City of Jackson. 541 F.Supp. at 1140. Plaintiffs' preferred plan (Kirksey Plan 1) contained one district that was 64.37% black; the alternative plan (Kirksey Plan 2) contained one district that was 65.81% black. *Id.* The plan urged by the AFL-CIO, the "Simpson Plan," combined fifteen Delta and part-Delta counties with six predominantly white eastern rural counties to produce four majority white districts and one district with a black population majority of 53.77%. *Id.* at 1141. The Kirksey Plan 1 had a total population variance of .2150%; the Kirksey Plan 2 a variance of .230%, and the Simpson plan a variance of .2141%.

The court was bound by *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982), to fashion an interim plan that adhered to the state's political policies to the extent those policies did not violate the Constitution or the Voting Rights Act. 541 F.Supp. at 1141. The court determined that the following political policies underlay the passage of S.B. 2001:

- (1) Minimal change from 1972 district lines; (2) least possible population deviation; (3) preservation of the electoral base of incumbent congressmen; and (4) establishment of two districts with 40% or better black population.

Id. at 1143. Because the Simpson Plan most nearly accorded with the latter three policies, which the court found to be constitutionally and statutorily valid,⁴ we ordered it into effect on an interim basis. That plan was used for the 1982 congressional elections. It is depicted on a map appended to our prior decision, *id.* at 1146, and is statistically described as follows:

District	Total Population	Deviation	% Deviation	Black %
1	504,671	+ 543	+ .1077	25.86
2	504,697	+ 569	+ .1128	53.77
3	508,760	- 368	-.0729	31.23
4	503,893	- 235	-.0466	45.25
5	503,617	- 511	-.1013	19.84

Although the Second District under the Simpson Plan was a majority black district (53.77%), it had a minority black voting age population of 48.05%.

Analysis of the Simpson Plan under the standard established in amended § 2 of the Voting Rights Act of 1965 reveals its invalidity.

II. Amended Section 2

Section 2 of the Voting Rights Act of 1965, as amended, presently reads:

Sec. 2(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in con-

⁴ As to the first policy, the court recognized that the validity of the Attorney General's conclusion that drawing lines for Districts 1, 2, and 3 from east to west unlawfully diluted black voting strength was the primary issue in the proceedings then pending in the District Court of the District of Columbia. It therefore accepted, without indicating any view as to its validity, the Attorney General's conclusion. 541 F.Supp. at 1143.

travention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) a violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C.A. § 1973 (West Supp. 1983). The amendment to Section 2 was designed to eliminate the requirement, prescribed in *City of Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 2332 (1980), that a plaintiff demonstrate intentional discrimination to establish a violation of section 2.⁵

⁵ S. 1992 amends Section 2 of the Voting Rights Act of 1965 to prohibit any voting practice, or procedure [which] results in discrimination. This amendment is designed to make clear that proof of discriminatory intent is not required to establish a violation of Section 2. . . .

S. Rep. No. 417, 97th Cong. 2d Sess. 2, reprinted in 1982 U.S. Code Cong. & Ad. News 177 (hereinafter cited as Senate Report). See *Jones v. City of Lubbock*, No. 83-1196 (5th Cir. Mar. 5, 1984); *Jordan v. City of Greenwood*, 711 F.2d 667, 668-69 (5th Cir. 1983); *Buchanan v. City of Jackson*, 708 F.2d 1066, 1072 (6th Cir. 1983); *Campbell v. Gadsden County School Board*, 691 F.2d 978, 981, n.4 (11th Cir. 1982); *Seamon v. Upham*, CA No. P-81-49-CA (E.D. Tex. 1983); *Major v. Treen*, 574 F.Supp. 325, 342 (E.D. La. 1983); Blumstein, Defining and Proving Race Discrimination: Perspectives on the Purpose v. Results Approach from the Voting Rights

We reject the contention of the Republican Defendants that Section 2, if construed to reach discriminatory results, exceeds Congress's enforcement power under the fifteenth amendment. We agree with the analysis and conclusion set out in *Major v. Treen*, 574 F.Supp. 325, 342-349 (E.D. La. 1983) (three judge court), which rejected a similar assault on the constitutionality of Section 2. We therefore adopt that treatment of this issue without repetition here.

The Senate Judiciary Report on the amendment states that the "results" language of new Section 2 was meant to "restore the pre-[*City of Mobile v.*] *Bolden* legal standard which governed cases challenging electoral systems or practices as an illegal dilution of the minority vote." Senate Report at 27. The Report then enumerates the factors courts should consider in deciding whether plaintiffs have established a violation of Section 2. These factors, derived from the Supreme Court's opinion in *White v. Regester*, 412 U.S. 755 (1973), as applied in this Circuit in *Zimmer v. McKeithen*, 485 F.2d 1287 (5th Cir. 1973) (en banc), *aff'd on other grounds sub. nom East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976), include, but are not limited to:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

Act, 69 Va. L. Rev. 633, 689-70 (1983); Hartman, *Racial Vote Dilution and Separation of Powers: An Exploration of the Conflict between the Judicial "Intent" and the Legislative "Results" Standards*, 50 Geo. Wash. L. Rev. 689, 726 (1982).

The Republican Defendants have argued that amended Section 2 preserves the requirement of proving discriminatory intent. We find this argument to be meritless as it runs counter to the plain language of amended § 2, its legislative history, and judicial and scholarly interpretation.

2. The extent to which voting is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

Senate Report at 28-29 (footnotes omitted). The Report also cites for consideration, as additional factors probative of a violation of Section 2: (1) whether elected officials are unresponsive to the needs of minority group members; and (2) whether the policy underlying the challenged procedure is "tenuous." *Id.* at 29. No particular number of these factors need be proved. *Id.*

III. Amended Section 2 and the Simpson Plan

The court finds that the aggregate of the following factors shows that the Simpson Plan unlawfully dilutes minority voting strength.

A. Past Discrimination

That Mississippi has a long history of de jure and de facto race discrimination is not contested. That history

has been often recounted in judicial decisions⁶ and includes the use of such discriminatory devices as poll taxes, literacy tests, residency requirements, white primaries, and the use of violence to intimidate blacks from registering for the vote. The State is a covered jurisdiction under the Voting Rights Act of 1965. The Attorney General has designated 42 of the counties in Mississippi for federal registrar enforcement of the right to vote.

We find that the effects of the historical official discrimination in Mississippi presently impede black voter registration and turnout. Black registration in the Delta area is still disproportionately lower than white registration. No black has been elected to Congress since the Reconstruction period, and none has been elected to statewide office in this century. Blacks hold less than ten percent of all elective offices in Mississippi, though they constitute 35% of the state's population and a majority of the population of 22 counties.

The evidence of socio-economic disparities between blacks and whites in the Delta area and the state as a whole is also probative of minorities' unequal access to the political process in Mississippi.⁷ Blacks in Mississippi,

⁶ See, e.g., *United States v. Mississippi*, 380 U.S. 128 (1965); *Kirksey v. Board of Supervisors*, 554 F.2d 139, 144 (5th Cir. 1977); *Moore v. Leflore County Board of Election Commissioners*, 502 F.2d 621, 624 (5th Cir. 1974), *aff'd* 361 F.Supp. 603, 605 (N.D. Miss. 1972); *Mississippi v. United States*, 490 F.Supp. 569, 575 (D.D.C. 1979), *aff'd*, 444 U.S. 1050 (1980).

⁷ The courts have recognized that disproportionate educational employment, income level and living conditions arising from past discrimination tend to depress minority political participations, e.g. *White [v. Regester]*, 412 U.S. at 768; *Kirksey v. Board of Supervisors*, 554 F.2d 139, 145 [(5th Cir. 1977)]. Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.

especially in its Delta region, generally have less education, lower incomes, and more menial occupations than whites. The State of Mississippi has a history of segregated school systems that provided inferior education to blacks. See United States Commission on Civil Rights, *Voting in Mississippi*, pp. 3-4 (1965). Census statistics indicate lingering effects of this past discrimination: the median family income in the Delta Region (Second District) for whites is \$17,467, compared to \$7,447 for blacks; more than half of the adult blacks in the Second District have attained only 0 to 8 years of schooling, while the majority of white adults in this District have completed four years of high school; the unemployment rate for blacks is two to three times that for whites; and blacks generally live in inferior housing.

B. Racial Bloc Voting

Plaintiffs have established that voters in Mississippi have previously voted and continue to vote on the basis of the race of candidates for elective office. The state defendants had conceded as much prior to the 1982 elections, but attempted to show at trial that the 1982 campaign in the Second District was not characterized by racial bloc voting. The evidence defendants presented was that the black Democratic candidate, Robert Clark, received approximately 15% of the white vote in the 1982 general election and that Clark won the Democratic nomination in a primary contest against white opponents. The primary election in the Second District conducted under our prior plan was characterized by confusion and low voter turnout due to a variety of factors, including uncertainty about election dates, the recent realignment of the district, and the lack of an incumbent. The race was additionally atypical because of a court order allowing Republican voters to participate in the Democratic primary. Clark's victory in the primary was followed by defeat in the general election—a defeat we find was caused in part by racial bloc voting. Plaintiffs' proof,

also based on analysis of these election returns, demonstrated a consistently high degree of racially polarized voting in the 1982 election and previous elections. From all of the evidence, we conclude that blacks consistently lose elections in Mississippi because the majority of voters choose their preferred candidates on the basis of race. We therefore find racial bloc voting operates to dilute black voting strength in Congressional districts where blacks constitute a minority of the voting age population. Since the Second District under the Simpson Plan does not have a majority black voting age population, the presence of racial bloc voting in that district inhibits black voters from participating on an equal basis with white voters in electing representatives of their choice. As the Supreme Court held in *Rogers v. Lodge*, 458 U.S. 613, 623, 102 S.Ct. 3272, 3279 (1982):

Voting along racial lines allows those elected to ignore black interests without fear of political consequences, and without bloc voting the minority candidates would not lose elections solely because of their race.

C. The State Policies Underlying the Simpson Plan

This court previously adopted the Simpson Plan for interim use primarily because it conformed to the State legislature's policy of favoring the division of the black population of the State into two "high impact" districts rather than concentrating it into one district. 541 F. Supp. at 1143-44. The results test required by Section 2 precludes dependence on this policy. The combination of six predominantly white eastern counties with the Delta region's black population, when considered in light of the effects of past discrimination on black efforts to participate in political affairs and the existence of racially polarized voting, operated to minimize, cancel, or dilute black voting strength in the Second District. *Kirksey v. Board of Supervisors*, 554 F.2d at 150; see *Major v. Treen*, 574 F.Supp. at 354; Hartman, *Racial Vote Dilution and Sepa-*

ration of Powers; An Exploration of the Judicial "Intent" and the Legislative "Results" Standards, 50 Geo. Wash. L. Rev. 689, 695 (1982). Our previous opinion relied on *United States v. Forrest County Board of Supervisors*, 571 F.2d 951 (5th Cir. 1978), and *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151 (5th Cir. 1981). Neither involved evidence of racial bloc voting. They are no longer apposite.

D. Other Factors

Plaintiffs produced other persuasive evidence that the political processes in Mississippi were not equally open to blacks. Evidence of racial campaign tactics used during the 1982 election in the Second District supports the conclusion that Mississippi voters are urged to cast their ballots according to race.⁸ This inducement to racially polarized voting operated to further diminish the already unrealistic chance for blacks to be elected in majority white voting population districts.

IV. The Court-Ordered Interim Plan

In devising a plan to replace our prior plan for the impending election, we recognized the obligation to: (1) achieve the least possible deviation from the one person, one vote ideal, *Chapman v. Meier*, 420 U.S. 1, 26-27, 95 S.Ct. 751, 765-66 (1975); (2) design a plan that is not

⁸ One campaign television commercial sponsored by the white candidate whose slogan was "He's one of us" opened and closed with a view of Confederate monuments accompanied by this audio message:

You know, there's something about Mississippi that outsiders will never, ever understand. The way we feel about our family and God, and the traditions that we have. There is a new Mississippi, a Mississippi of new jobs and new opportunity for all our citizens. [video pan of black factory workers] We welcome the new, but we must never, ever forget what has gone before. [video pan of Confederate monuments] We cannot forget a heritage that has been sacred through our generations.

racially discriminatory in either purpose or effect, *McDaniel v. Sanchez*, 452 U.S. 130, 148, 101 S.Ct. 2224, 2235 (1981); and (3) adhere to the state's policies except to the extent such policies are violative of either the Constitution or the Voting Rights Act, *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518, 1520-21 (1982).

The plan ordered into effect by our final judgment of January 6, 1984, meets these requirements. The statistics of that plan are set out below.

Congressional District	Total Population	Percent Variance From the Norm	Black Population	% Black	Total Voting Age Pop. (VAP)	Black VAP	% Black VAP
1	504,977	-.0101%	124,136	24.58%	346,974	74,165	21.43%
2	504,924	-.0206%	293,838	58.30%	322,719	170,491	52.83%
3	504,242	+.0226%	161,710	32.07%	348,524	98,478	28.26%
4	504,187	+.0117%	211,714	41.99%	346,370	129,618	37.42%
5	504,108	-.0040%	95,808	19.01%	342,754	57,068	16.65%
Range .0432							

The interim plan was constructed under these criteria: create a rural Delta-River area district with a black voting age population majority; achieve minimal deviation from the ideal population per congressional district of 504,128; create districts containing voters with similar interests; preserve the electoral base of incumbents; and comply with the legislative goal of achieving high impact districts without splintering cohesive black populations.

We recognize that the creation of a Delta district with a majority black voting age population implicates difficult issues concerning the fair allocation of political power. See A. Howard & B. Howard, *The Dilemma of the Voting Rights Act—Recognizing the Emerging Political Equality Norm*, 83 Colum. L. Rev. 1615 (1983). Although the use of a race-conscious remedy for discrimination, approved by the Supreme Court in *United Jewish Organizations v. Carey*, 430 U.S. 144 (1977), can come into tension with Congress' disclaimer in amended § 2 of any right to proportional representation, the plan we have adopted fully rectifies the dilution of black voting strength in the Sec-

ond District and satisfies the requirements of amended § 2 without achieving proportional representation for blacks in Mississippi.

The court rejected alternative plans offered by plaintiffs which would achieve a significantly higher black voting age population (approximately 60%) in the Second District. Plaintiffs argue that a black voting age population of such preponderance is required for blacks to elect representatives of their choice. Amended § 2, however, does not guarantee or insure desired results, and it goes no further than to afford black citizens an equal opportunity to participate in the political process. In commenting upon the § 2 amendment, Senator Dole, a leading sponsor of the compromise legislation, stated: "Citizens of all races are entitled to have an equal chance of electing candidates of their choice, but if they are fairly afforded that opportunity and lose, the law should offer no remedies." Senate Report at 193. In the opinion of this court, after considering the totality of the circumstances, the creation of a Second District with a clear black voting age population majority of 52.83% is sufficient to overcome the effects of past discrimination and racial bloc voting and will provide a fair and equal contest to all voters who may participate in congressional elections. Credible expert testimony received in this case supports this conclusion. Additionally, plaintiffs' plans are an obvious racial gerrymander which would bring into the Second District overwhelmingly black sections of the City of Jackson and its suburbs; these inner-city, metropolitan areas have little in common with the interests of the predominantly rural Delta region. Also, plaintiffs' plans unnecessarily dilute black voting strength in the Fourth District. The Fourth District presently has a black population of 45.25%. The evidence presented indicates this is a factor in making the Fourth District representative reasonably receptive and sensitive to the needs of the black community. The plan adopted necessarily reduces the black population of the Fourth District to 41.99%.

To further reduce the black population in the Fourth District to 33.7 or 33.83% as proposed by plaintiffs (541 F. Supp. at 1140) would diminish the impact of black voters in that district. Although the plans proposed by plaintiffs would probably insure the election of a black congressman in the Second District, the attempt to gain this election guaranty, which § 2(b) expressly disclaims, would have a certain adverse effect on the impact of the black voters in the Fourth District. Because of these considerations, we conclude that a black voting age population majority of 52.83% achieved under the court's plan will remedy the defect we now perceive in the Simpson Plan under the amended § 2.

We are cognizant that our court-ordered interim plan does not provide a compact geographical configuration for the Second District. However, it consists of rural Delta and river counties with similarities of interest; avoids gerrymandering a substantial portion of metropolitan Jackson into a district with these rural or farm counties; and yields the least adverse impact on the black voting influence in the Fourth District.

A specific description of the five congressional districts as established in our final judgment of January 6, 1984, and map outlining these districts, are attached.

/s/ C.C.

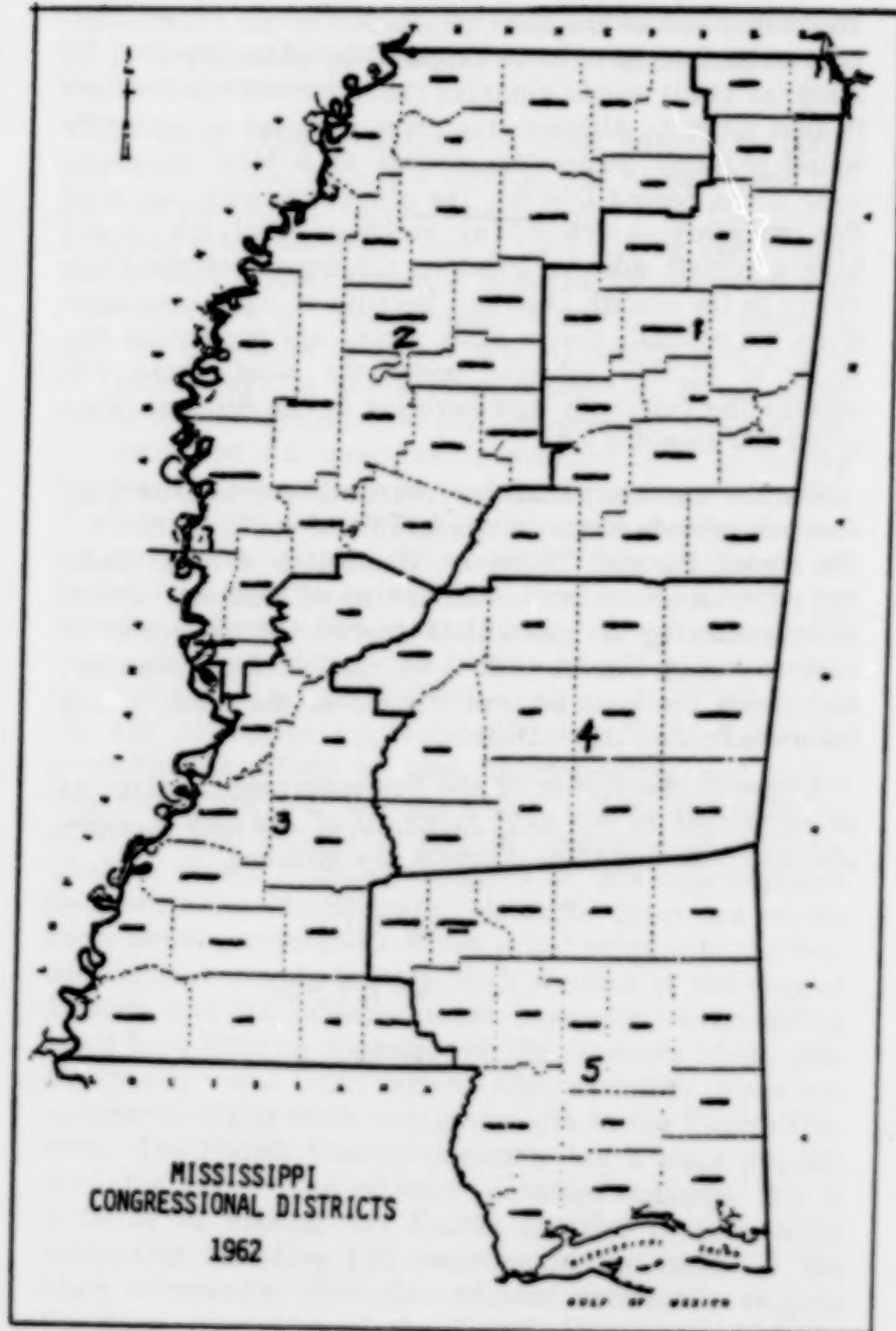
/s/ L.T.S.Jr.

/s/ W.C.K.

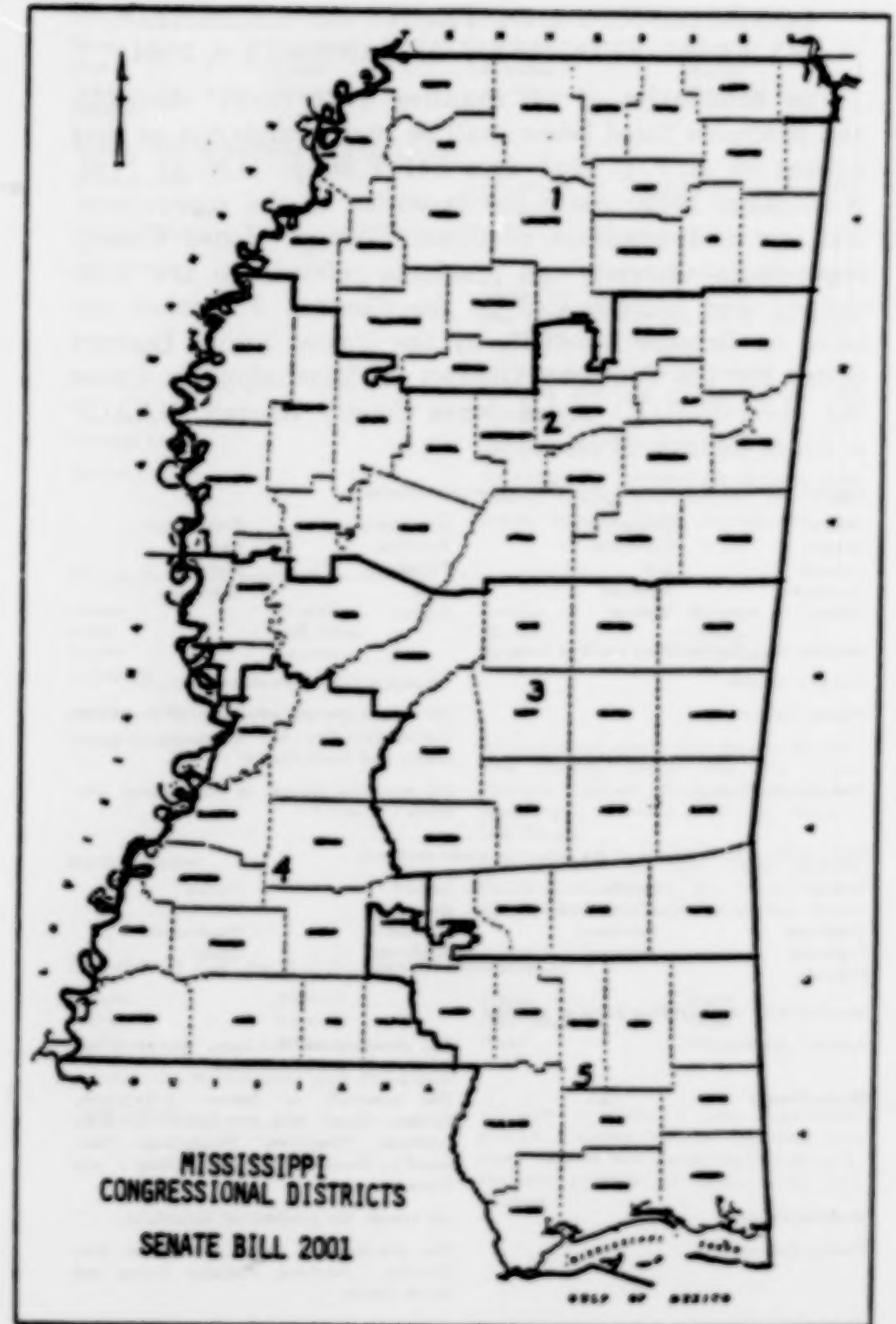
EDITOR'S NOTE

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CONGRESSIONAL DISTRICTS ESTABLISHED BY FINAL JUDGMENT OF JANUARY 6, 1984

The boundaries of all counties, supervisors' districts, and precincts listed below shall be such boundaries as they existed on July 1, 1981 (see 541 F.Supp. 1135 at 1145, N.D. Miss. 1982), with the exception of the supervisors' districts and precincts of Jones County. Jones County supervisors' districts and precincts referred to are those defined and incorporated in the Consent Judgment entered on October 26, 1983, by the United States District Court for the Southern District of Mississippi in Cause No. H-83-0200(R) styled Jones County Branch, NAACP v. Jones County, Mississippi.

District No. 1 shall consist of the following whole counties:

Alcorn	Itawamba	Montgomery	Tishomingo
Benton	Lafayette	Pontotoc	Union
Calhoun	Lee	Prentiss	Webster
Chickasaw	Marshall	Tate	Yalobusha
DeSoto	Monroe	Tippah	

together with the following parts of counties:

Choctaw County	All except for the Panhandle precinct;
Panola County	All except for the precincts of Crenshaw, Curtis, East Crowder, Longtown, Pleasant Grove, and South Curtis;
Tallahatchie County	All precincts located in Supervisors' Districts 1, 2, and 3.

District No. 2 shall consist of the following whole counties:

Bolivar	Holmes	Leflore	Tunica
Carroll	Humphreys	Quitman	Warren
Chalmer	Issaquena	Sharkey	Washington
Coahoma	Jefferson	Sunflower	Yazoo
Grenada			

together with the following parts of counties:

Attala County	The precincts of McAdams, Newport, Sallis, Shrock, and Possumneck;
Hinds County	The precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Dry Grove, Edwards, Learned, Pinehaven, Pocahontas, Raymond 1, Raymond 2, Tinnin, Utica 1, and Utica 2;
Madison County	All except the precinct of Ridgeland;
Panola County	The precincts of Crenshaw, Curtis, East Crowder, Longtown, Pleasant Grove, and South Curtis;
Tallahatchie County	All precincts located in Supervisors' District 4 and 5.

District No. 3 shall consist of the following whole counties:

Clarke	Lauderdale	Newton	Scott
Clay	Leake	Noxubee	Smith
Jasper	Lowndes	Oktibbeha	Winston
Kemper	Neshoba		

together with the following parts of counties:

Attala County	All except for the precincts of McAdams, Newport, Sallis, Shrock, and Possumneck;
Choctaw County	The Panhandle precinct;
Jones County	All new precincts located in new Supervisors' Districts Nos. 1, 2, and 3; The New Blackwell precinct in new Supervisors' District No. 4; and All of new Supervisors' District 3 except the new precincts of Glade, Overt, and Tuckers;
Madison County	The Ridgeland precinct;
Rankin County	All except for the precincts of Cato, Clear Branch, County Line, Dobson, Dry Creek, Johns, Mountain Creek, Puckett, and Star.

District No. 4 shall consist of the following whole counties:

Adams	Franklin	Lincoln	Simpson
Amite	Jeff. Davis	Marion	Walthall
Copiah	Lawrence	Pike	Wilkinson
Covington			

together with the following parts of counties:

Hinds County	All except the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Dry Grove, Edwards, Learned, Pinehaven, Pocahontas, Raymond 1, Raymond 2, Tinnin, Utica 1, and Utica 2.
Rankin County	The precincts of Cato, Clear Branch, County Line, Dobson, Dry Creek, Johns, Mountain Creek, Puckett, and Star.

District No. 5 shall consist of the following whole counties:

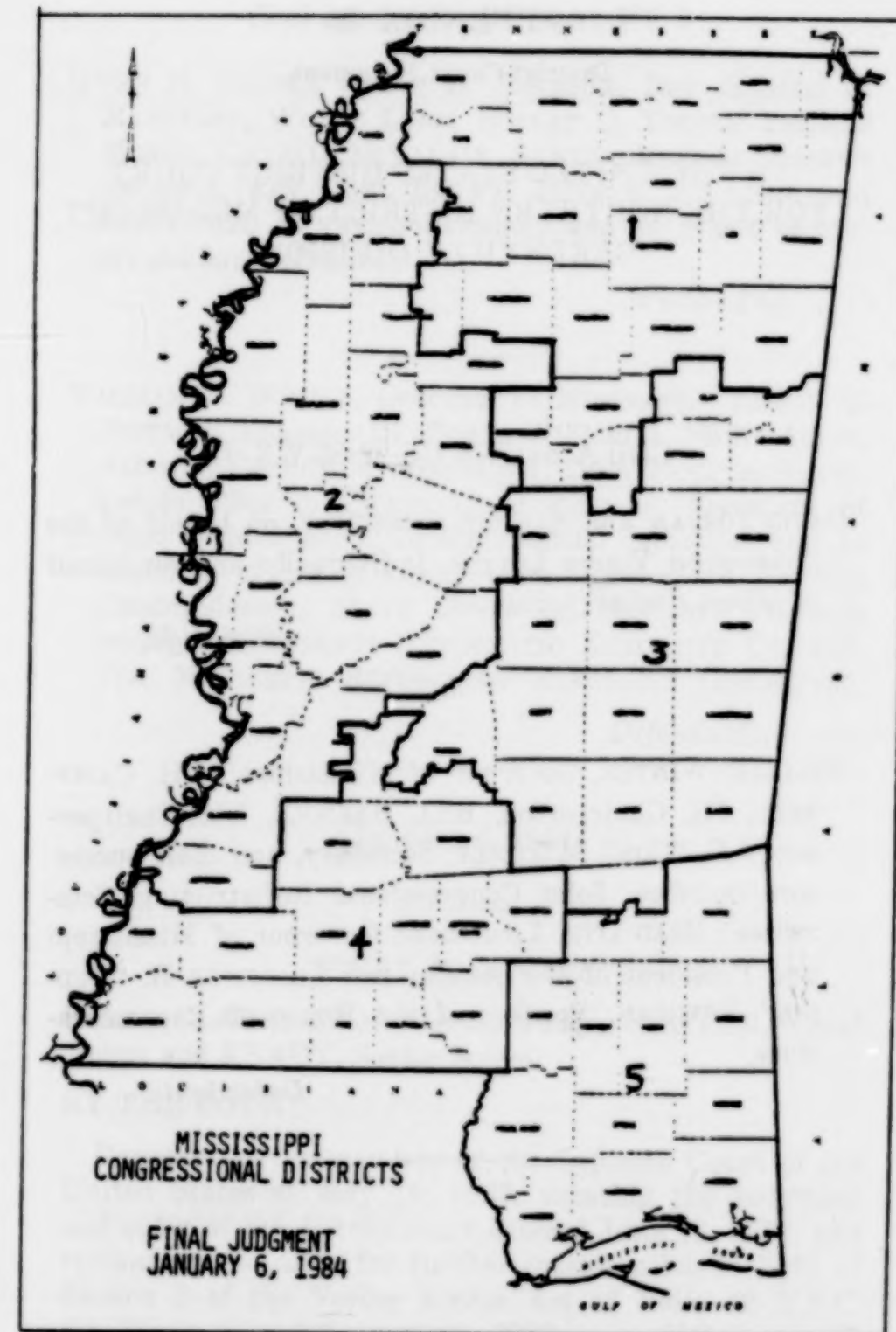
Forrest	Hancock	Lamar	Perry
George	Harrison	Pearl River	Stone
Greene	Jackson	Perry	Wayne

together with the following parts of counties:

Jones County	All new precincts in new Supervisors' District 4 except the new Blackwell Precinct; and In new Supervisors' District 3, the new precincts of Glade, Overt, and Tuckers.
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The statistics for each of the five congressional districts defined above are as follows:

Congressional District	Total Population	Percent Variance from the Norm	Black Population	% Black	Total Voting Age Pop. (VAP)	Black VAP	% Black VAP
1	504,077	-.0101%	124,136	24.63%	346,074	74,165	21.43%
2	504,024	-.0206%	293,838	58.30%	322,719	170,491	52.83%
3	504,242	+.0226%	161,710	32.07%	348,524	98,478	28.26%
4	504,187	+.0117%	211,714	41.99%	346,370	129,818	37.42%
5	504,108	-.0040%	95,808	19.01%	342,754	57,068	16.65%
Range .0432							



APPENDIX B

District Court Judgment.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

Civil Action No. GC 82-80-WK-0

DAVID JORDAN and SAMMIE CHESTNUT, on behalf of the
Greenwood Voters League, Individually and on behalf
of others similarly situated,

Plaintiffs,

v.

WILLIAM WINTER, Governor of Mississippi; T.H. CAMP-
BELL, III, Chairperson, BILL HARPOLE, Vice-Chairper-
son, J.C. "CON" MALONEY, Secretary, and their succes-
sors in office, Joint Congressional Redistricting Com-
mittee; BRAD DYE, Lieutenant Governor of Mississippi
and President of the Senate; and CLARENCE B. "BUD-
DIE" NEWMAN, Speaker of the House of Representa-
tives,

Defendants.

Civil Action No. GC 82-81-WK-0

OWEN H. BROOKS, SARAH H. JOHNSON, REV. HAROLD R.
MAYBERRY, WILLIE LONG, ROBERT E. YOUNG, THOMAS
MORRIS, CHARLIE McLAURIN, SAMUEL MCCRAY, ROBERT
JACKSON, REV. CARL BROWN, JUNE E. JOHNSON, and
LEE ETHEL HENRY, individually and on behalf of oth-
ers similarly situated,

Plaintiffs,

v.

WILLIAM F. WINTER, Governor of Mississippi; EDWIN L.
PITTMAN, successor in office to William A. "Bill" Allain,
Attorney General of Mississippi; DICK MOLPUS, succes-
sor in office to Edwin Lloyd Pittman, Secretary of
State of Mississippi, in their official capacities and as
members of the Mississippi State Board of Election
Commissioners; STATE BOARD OF ELECTION COMMIS-
SIONERS, MISSISSIPPI DEMOCRATIC EXECUTIVE COMMIT-
TEE, MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE,

Defendants.

(January 6, 1984)

FINAL JUDGMENT

Before CLARK, Chief Circuit Judge, SENTER, Chief
Judge, and KEADY, Senior Judge:

BY THE COURT:

Pursuant to the mandate of the Supreme Court of the
United States of May 16, 1983, vacating the judgment
and order of the district court entered June 10, 1982, and
remanding the cases for further consideration in light of
Section 2 of the Voting Rights Act of 1965, 42 U.S.C.
§ 1973, as amended June 29, 1982, — U.S. —, 77

L.Ed.2d 291 (1983) (Mem.), the district court reconvened, received additional oral and documentary evidence, and considered briefs and argument of counsel. In its bench ruling (appended hereto as Addendum "A"), the court found that the congressional redistricting plan it previously adopted violates amended Section 2, particularly as to the structure of the Second Congressional District. Therefore, the court-ordered redistricting plan previously entered must be revised.

Accordingly, it is

ORDERED:

That until a redistricting plan is duly enacted by the State of Mississippi and precleared in accordance with Section 5 of the Voting Rights Act of 1965, as amended, the five Mississippi congressional districts for the election of members of the United States House of Representatives in the primary and general elections for 1984 and thereafter are established as detailed on Addendum "B" hereto. A map depicting the foregoing court-ordered congressional redistricting plan is also appended hereto as Addendum "C".

The Court reserves the power to issue supplemental directions and orders should the need arise, to carry out the provisions of this judgment. The court also reserves the right to file an opinion at a later date.

This 6th day of January, 1984.

/s/ Charles Clark
United States Circuit Judge

/s/ L. T. Senter, Jr.
United States District Judge

/s/ William C. Keady
United States District Judge

OPINION OF THE COURT

Announced December 21, 1983

BY JUDGE CLARK:

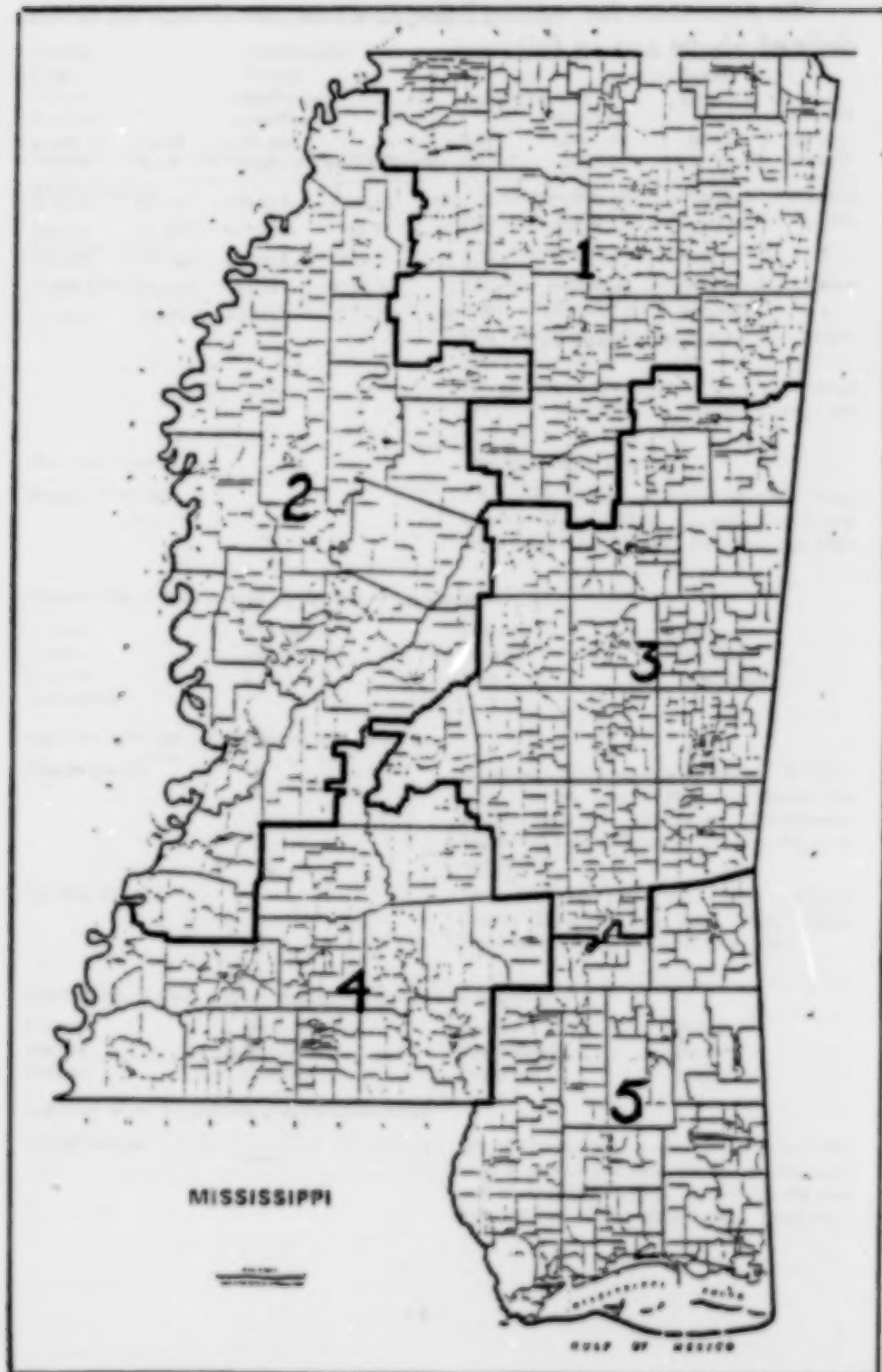
Ladies and Gentlemen. The court has come to a decision which must be implemented with the assistance of the parties in the case because the court does not have the expertise or the precise figures to make a final judgment. Until such time as the Legislature of the State of Mississippi discharges its duty to redistrict the Congressional Districts of the State of Mississippi in accordance with the 1980 census, the court must act under the remand of the Supreme Court of the United States to reconsider its prior decision in this case in light of the reenacted Section 2 of the Voting Rights Act.

The court finds that the plaintiffs have shown by a preponderance of the evidence that the totality of the circumstances show that the political processes in District 2 in particular are not equally open to participation by members of a class protected by Section 2(A) of the amended Act in that the members of that class have less opportunity than other members of the electorate to participate in the political processes and to elect representatives of their choice.

In order to guide the parties in assisting the court to draw a precise decree, the court announces the following guidelines. I'll ask the clerk at this time to hand to each of the parties two lists prepared by the court which relate to District 2.

ADDENDUM "A"

The Second Congressional District of the State of Mississippi will be comprised of the following whole counties: Bolivar, Carroll, Claiborne, Coahoma, Grenada, Holmes, Humphreys, Issaquena, Jefferson, Quitman, Sharkey, Sunflower, Tunica, Washington, Yazoo, Warren,



APPENDIX C

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1973:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right

to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. 1973C:

Whenever a State or political subdivision with respect to which the prohibition set forth in section 1973(a) of this title based upon determinations made under the first sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973(a) of this title based upon determinations made under the second sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibition set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualifications, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification,

prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.